CONFERENCE OF THE COMMITTEE ON DISARMAMENT

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BRAZIL

Working Paper on the settlement of disputes arising from the implementation of a Treaty for the Non-Armament of the Sea-Bed and Ocean Floor

1. Twice in the course of its intervention on the general aspects of item 3 of the Committee's Agenda and when specially commenting on the Soviet and American Treaty drafts (Doc. ENDC/240 and ENDC/249), the Brazilian Delegation stated its firm conviction that any normative convention for the non-armament of the sea-bed and the ocean-floor would be incomplete if it were not to include appropriate provisions for the solution of disputes and controversies arising from its implementation (ENDC/PV.413 and PV.423).

2. The Government of Brazil is of the opinion that the implementation of a Treaty for the non-armament of the sea-bed and ocean-floor depends basically on two conditions:

(1) the clear and uncontroversial definition of the objects which are to be banned from the sea-bed and ocean-floor;

(2) the establishment of adequate control provisions which can provide to any Party to the Treaty firm assurances that all Parties are honouring their obligations and respecting rights recognized under International Law.

3. The present working-paper aims to attract the attention of the Committee to the necessity of examining the natural corolary of these conditions, namely, the formulation of suitable provisions for the settlement of disputes arising from the actual interpretation of a Treaty for the non-armament of the sea-bed and ocean-floor and specially from the operation of its norms of control.

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4. The Government of Brazil is also convinced that the inclusion in the future Treaty of such provisions will considerably facilitate the very acceptance of any control mechanism by a substantial number of States.

5. It is possible to envisage a number of situations where disputes, controversies or conflicts of interpretation among Parties could arise. Some of them could comprise the following elements in several possible combinations:

(1) divergent interpretations concerning the nature or ultimate purpose of an installation placed or implanted on the sea-bed and ocean-floor;

(2) disputes stemming from the manner in which an operation, in any of the stages of the control system, is conducted, specially when involving inspection, access and consequently interference with installations or activities on the sea-bed and ocean-floor or with the security areas that can surround these installations;

(3) disputes related to control activities undertaken in waters superjacent to the continental shelf of any State Party to the Treaty or in its territorial waters when these have a width of more than 12 miles;

(4) conflicting contentions on the jurisdiction covering military or other installations on the sea-bed and ocean-floor and on the responsibility for the emplacement of military or other installations on this environment;

(5) disputes arising from the lack of co-operation among States Parties in endeavouring to resolve questions regarding the fulfillment of the provisions of the Treaty as a whole and specially the norms of control.

6. This list does not intend to cover all specific situations where a dispute may arise but it still provides, in the view of the Brazilian Delegation, an examplification of the extent to which controversies may appear in the implementation of the Treaty.

7. When presenting this working-paper, the Brazilian Delegation remains fully aware of the fact that the Treaty under examination would become the first international instrument on arms control and disarmament negotiated in the Committee on Disarmament to include provisions for the settlement of disputes. It is however necessary to point out that never before had the Committee prepared directly or participated in the preparation of a Treaty which comprehended foreign means of control in areas that are under the national jurisdiction of States. This is clearly the case of a Treaty for

the non-armament of the sea-bed and ocean-floor since the continental shelf or even territorial waters of States Parties may come into the area where control operations may take place by national means of other States Parties.

8. The provisions for the settlement of disputes could conform with the usual processes such as mediation and eventual recourse to international instances such as the International Court of Justice. They could also specifically conform with the mechanisms of Chapter VI of the Charter of the United Nations. In such circumstances, the Security Council of the United Nations would be called to examine disputes on the basis of substantiated cases put to it by the States-Parties involved in the dispute and take a resolution on it. It could also be envisaged a system according to which the Secretary-General of the United Nations could be asked, by the interested Party or Parties, to perform the task of setting up the adequate methods and adopting the necessary measures in order to expedite the verification of any complaint.

9. The Brazilian Delegation hopes that the present preliminary suggestions, which are put forward in a spirit of frank co-operation, shall be thoroughly and attentively examined by the Committee.